

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1293 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

HEIRS & LEGAL REPRESENTATIVES OF SONI LAXMIDAS MULJI

Versus

RATILAL MANISHANKER BHATT [DECD.] THRO HEIRS & L.R.

Appearance:

1. Civil Revision Application No. 1293 of 1988
MR TS NANAVATI for Petitioners
MR TH SOMPURA for Respondents
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 15/04/2005

ORAL JUDGEMENT

This is one more Revision Application where for want of diligence on the part of the Registry of the High Court, the original record has been destroyed by the

Court below. Though the Revision Application was admitted to final hearing on 22nd December, 1988, the intimation of admission was not sent until 20th August, 2002. In the meanwhile, the lower Court has, unaware of the pending Revision Application, destroyed the original record in accordance with the relevant rules.

Feeling aggrieved by the judgment and order dated 30th November, 1988 passed by the learned Extra Assistant Judge, Junagadh in Regular Civil Appeal No. 128 of 1987, the appellants, the heirs and legal representatives of the plaintiff in Regular Civil Suit No. 911 of 1982, have preferred the present Revision Application under Section 29 [2] of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as "the Rent Act"].

The plaintiff was the tenant in the suit premises, the ground floor of a residential house situated at Junagadh, for some 27 years. The defendant no. 1 purchased the said house from the owner one Shri Kurjibhai Nathabhai. The wada in the suit premises which was open to sky was covered by the defendant by constructing a slab. Feeling aggrieved, the plaintiff instituted the above referred Regular Civil Suit No. 911 of 1982 in the court of learned Civil Judge [JD], Junagadh for restitution of right of enjoyment of the suit premises and for removal of the obstruction i.e. the above referred slab covering the Wada. Pending the suit, the plaintiff passed away. His heirs and legal representatives, the present petitioners were substituted as the plaintiffs. The learned trial Judge, by his judgment and order dated 30th November, 1987 dismissed the suit. The learned Civil Judge was pleased to hold that the plaintiffs had no right to claim easement against the defendant as the suit premises was a part of the same house; that in absence of a rent note, the plaintiffs could not claim right to air and light through the open Wada as a matter of right; that there was adequate ventilation available in the suit premises for the plaintiffs' enjoyment. Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No. 128 of 1987 in the District Court at Junagadh. The appeal was heard and decided by the learned Extra Assistant Judge, Junagadh. The lower appellate court, by judgment and order dated 30th November, 1988, confirmed the finding recorded by the trial Court and dismissed the appeal. Therefore, the present Revision Application.

Mr. Nanavati has assailed the judgment of the lower appellate Court. He has relied upon documents

Exhs.79, 83 & 84. He has submitted that by order no. 154 dated 11th April, 1980 [Exh.79], Junagadh Municipality had issued stay order against the defendant's constructing the aforesaid slab. Nevertheless, the defendant did complete construction of the said slab in contravention of the stay ordered by the Municipality. In the proceedings before the Municipality, the defendant pleaded guilty. He has submitted that evidently the defendant constructed the aforesaid slab in contravention of the Municipal Regulations. He has further submitted that plaintiff was the tenant in the suit premises long before the defendant purchased the suit house. The petitioner had a right to enjoy the suit premises and air and light from the wada open to sky. By the construction of the disputed slab, the right of plaintiffs to enjoy the suit premises in its entirety has been abridged. The plaintiffs are, therefore, entitled to restoration of the right to enjoyment of the suit premises. He has also demonstrated how the plaintiffs' right to enjoyment has been curtailed.

I see no substance in this Revision Application. In view of the concurrent finding recorded by both the Courts below, no interference is warranted. The Revision Application is dismissed. Rule is discharged. Parties shall bear their own costs.

{Miss R.M Doshit, J.}

Prakash*